A study of Indian laws and International policies to protect Indian traditional knowledge: Design a sui-generis regime

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Dr. Pradeep Kumar

(Assistant professor)

SCHOLAR

Sarika Ujjwal

Admission No. 21213745

IIMT UNIVERSITY, GANGA NAGAR, MEERUT

INTRODUCTION

Traditional knowledge is seen as a form of intellectual property that has been generated, cultivated, and kept through many generations by local or traditional groups. Since it is used in the community, the outside world has not acknowledged the significance or applicability of this information. The great significance of TK connected to genetic resources/wealth has, however, been recognised in light of TRIPs and the expanding commercialisation, and it is today one of the most contentious problems facing the world community. We have seen, particularly in the last two decades, how large multinational firms have used traditional knowledge to their greatest advantage by producing a variety of plant-based medications and other health and aesthetic goods. It is frequently stated that the threat of bio-piracy has arisen as a result of some way in which the present intellectual property system has enabled such exploitation. As a result, representatives of poor countries and groups of people who have traditional knowledge have expressed grave worries about the worldwide theft of TK.

Patents, trademarks, and copyrights are a few examples of intangible works that are protected by intellectual property laws. Traditional knowledge and cultural manifestations from India are frequently not covered by IP rules, nonetheless. Concerns have been raised concerning the exploitation of traditional knowledge and cultural expressions as a result, especially in developing nations like India where such knowledge and manifestations are a vital component of the lives and means of support for millions of people. The major goal of this study is to provide a thorough examination of how well Indian IP laws safeguard traditional knowledge and cultural manifestations, taking into account relevant case law and references. The Indian Patent Act of 1970, the Indian Copyright Act of 1957, and the Biological Diversity Act of 2002 are only a few of the legislation that the Indian legal system uses to give some degree of protection for traditional knowledge and cultural manifestations.

Sustainable development can benefit greatly from traditional wisdom. The great bulk of the world's genetic resources are found in regions where the majority of indigenous peoples and local communities are located. Many of them have been cultivating and making sustainable use of biological variety for a very long time. It has been demonstrated that several of their methods improve and increase

biodiversity locally and help preserve thriving ecosystems. However, indigenous peoples and local communities play a much larger role in biological diversity conservation and sustainable usage than they do in managing natural resources. Their knowledge and methods serve as a significant resource for the whole community and a good guide for biodiversity policies. Additionally, indigenous peoples and local communities are most actively involved in conservation and sustainable usage since they are on-site groups with significant knowledge of their surroundings.Certain ethical and legal principles apply to the safeguarding of TK. Traditional knowledge cannot exist in isolation since it is holistic in nature and connected to its holders. There are sure to be certain shared interests and feelings associated with TK because it is the culmination of the intellectual work of the traditional society. These societies' traditional knowledge is a valuable resource since its people produced it, used it, shared it, and then passed it on to their offspring. While it is true that TK is an old-school method, this does not imply it is without modern elements. Due to the enormous economic, cultural, and spiritual importance of TK, a comprehensive policy is needed to safeguard it from being illegally misappropriated and to maintain the rights and legitimate interests of these traditional communities.

In order to uncover potential answers, a number of ideas have also been investigated. Few people have placed a strong emphasis on preserving traditional knowledge within the parameters of intellectual property law as outlined by the TRIPs Agreement. Some scholars place emphasis on changing non-IP regulations, such as those pertaining to biological diversity conservation, in order to provide proper protection for traditional knowledge. The third viewpoint that was identified calls for creating a sui-generis system or regime of traditional knowledge protection that may be built on a synthesis of current IP and non-IP legislation and policy while taking into account the customary principles.

India's adamant opposition to the theft of traditional knowledge through the granting of intellectual property rights in other nations has enabled India to take the initiative in the TRIPs-CBD discussions. India has undertaken considerable legal and non-legislative measures to conserve traditional knowledge in order to combat the issue of biopiracy. Even though many of them have been highly effective, they are still viewed as defensive measures for safeguarding TK since they do not acknowledge or grant any particular rights on the holders.

This study focuses mostly on the legal ramifications and how they affect the safeguarding of traditional knowledge in India. Ayurveda and other traditional knowledge are centred in India. But we fall short in protecting our costly conventional wisdom.

LITERATURE REVIEW

The researcher aims to highlight some of the major worries, difficulties, tough laws, and problems relating to the topic of conserving Traditional knowledge that have been noted by pertinent academic writers, policy-makers, and practitioners.

According to the WIPO, traditional knowledge is a horizontal, cross-cutting problem. The various organisations' approaches have diverse personalities, which are a natural reflection of each one's unique mission and goals. Differences in viewpoint have enriched the discussion and, more importantly, have highlighted the need for collaborative and cooperative approaches to finding effective and efficient ways of protecting TK, whether by using current IP mechanisms, developing a new, sui generis one, or adopting a combination of both.

The WIPO-IGC, which was founded in 2001, conducts research on the many TK-related issues, giving it a worldwide perspective. The Committee has been able to consider the issue of protecting TK either by adopting a "positive" approach through which certain specific rights/entitlements are recognised and granted to the knowledge-holders; or by defending the TK against unauthorised third-party IP claims thanks to the discussions and deliberations occuring at the IGC.

The Committee has identified a few policy objectives as well as key principles with a view to safeguarding traditional knowledge all over the world. As a result, it has also made it possible to draught draught legal instruments that would safeguard traditional knowledge (TK) from any unauthorised third-party usage as well as traditional cultural expressions (TCEs). The committee also discussed the basic clauses that need be included in the proposed sui generis model created specifically for TK protection.

In light of various aspects of sui-generis IP systems and sui-generis models for TK and genetic wealth, the Committee concluded that in order to identify the components of a potential sui-generis system, several crucial issues need to be taken into account. These include the policy objective of the protection, subject matter, eligibility requirements, ownership, rights, and mode of acquisition. The Committee created a draught document titled "The Protection of Traditional Knowledge: Draught Articles Facilitators" during its Fortieth Session in June 2019, which was held in continuation of the discussions at previous sessions.

According to Graham Dutfield, the general consensus is that because pharmaceutical companies and bioprospectors are misusing it and profiting greatly, TK should be protected. It follows that there would be no justification for protecting traditional knowledge at all if corporate "biopiracy" were not occuring on a large enough scale to need a legal reaction. But should we just give up on trying to give legal voice to the requests and worries of TK holders and their communities over extra-community use of their knowledge if it turns out that corporate copying of TK is less widespread than widely believed?

Additionally, it is stated that the WTO is not the proper forum for creating new standards for the preservation of positive traditional knowledge, as doing so would entail adding new language to the TRIPS Agreement and maybe deleting some already-existing language. It took a lot of work to make a simple change that would have improved access to medications, so it is difficult to think how much more work it would take to make the more significant changes that positive TK protection would need. This does not, however, imply that the WTO need not debate origin disclosure. The TRIPS Council has a clear mandate to accomplish this, and the necessary steps are quite simple in comparison to positive TK protection.

According to A. Damodaran's paper, traditional knowledge is only addressed in a limited sense by biodiversity law, which generally sees it as a characteristic of genetic resources. The valuation problem gets more difficult in bioprospecting agreements where both genetic resources and related knowledge are sought to be accessible since it is necessary to separate the value of genetic resources from its associated knowledge. It has been noted that traditional knowledge is frequently likely to be undervalued in contrast to genetic resources, which are an associated aspect, in this respect. Additionally, neither the definition of traditional knowledge nor any particular rights granted to knowledge bearers are provided under these laws.

According to Ms. Deepa Vardarajan, significant discrepancies between the goals of traditional knowledge protection and the current IP framework raise questions about whether IP rights are appropriate for traditional knowledge. Can such a system be effective and enforced globally while also addressing the worries of those who have conventional knowledge? Traditional knowledge preservation is

essentially incompatible with current intellectual property concepts and underlying arguments, according to a major portion of scholarly work to date.

According to Lisa P. Lukose, traditional knowledge-rich nations can select an appropriate system to grant protection to biogenetic resources and TK. Given the inherent value of TK and the considerable contribution provided to conservation, such proposed law should recognise the rights of local/traditional people. The suggested approach should aim to turn the policy goals, particularly those included in the Nagoya Protocol, into an instrument or document that is binding on the parties and is enforceable under law. It must develop a system that acknowledges and defends each member of the relevant traditional or indigenous community's rights and interests with regard to their knowledge, ensuring that any benefits resulting from it are distributed in a fair, just, and equitable way.

Research objectives: The study sets itself to achieve the following objectives in the above mentioned background**:**

1. To understand the concept and nature of traditional knowledge so as to study the key issues pertaining to it in the light of international legal developments.
2. To study the relationship between TK and formal IP regime and the challenges posed by existing IP regime for protection of TK. Further to analyze the issues relating to misappropriation of TK and the problem of biopiracy.
3. How to traditional knowledge need to protect under the regime of IP laws in India.
4. To study about the international approaches, convention related to traditional knowledge.
5. To examine the need of strong legislation to protect the traditional knowledge on international level.
6. To critically analyze , how USA has exploits our Indian traditional knowledge.

Research methodology:

The current body of study focuses on the implications of IPR laws and traditional knowledge in India. We still don't have any specific laws in place to safeguard our

costly traditional knowledge. Doctrinal Method has been used for this research, which involved searching a library, legal journals, internet databases, intellectual property blogs, journals, law reviews, case studies, and news sources, among other sources.

HYPOTHESIS OF THIS STUDY :

1. Traditional knowledge has no any particular legislation for its protection.
2. There is no any judicial body to resolve the cases related to the exploitation of expensive Indian traditional knowledge.
3. How USA has exploits Indian traditional knowledge and take many patents on it .
4. Why Indian laws are not sufficient to provide the protection of our Indian traditional knowledge .
5. The international regime related to the protection of traditional knowledge.

TENTATIVE SYNOPSIS

On the basis of objectives and purposes of the study, the whole study is divided into seven chapters:-

CHAPTER-1 Introduction

In addition to outlining the topic, problem statement, objectives, hypotheses, and methodology of this study, this chapter also highlights some of the major worries, difficulties, and problems that pertinent academic authors and practitioners have identified in relation to the problem of protecting TK. Additionally, it offers the thesis's structure, which makes room for this investigation.

CHAPTER-2 Understanding Traditional Knowledge

The basic meaning of the terms "traditional knowledge" and "genetic resources" is the focus of this chapter. It discusses the characteristics of traditional knowledge, the value or importance of TK and genetic resources, and TK and indigenous knowledge. discusses several TK definitions in further detail, as well as issues with TK definitions. First, it defines traditional knowledge broadly to include topics that may be considered to belong under the umbrella of "traditional cultural expressions/expressions of folklore" (TCE/EOF). Second, it defines it narrowly to omit those things that the traditional community would regard as crucial. The chapter goes on to explore the main challenge with regard to traditional knowledge holders, noting the difficulties in locating the societies or other stakeholders that have traditional knowledge. The state of conventional knowledge is the final topic covered in this chapter. It aims to determine if TK is kept privately as communal knowledge or whether it is in the public domain as a piece of common heritage. It also clarifies the holders' continuous desire for the privatisation of TK.

CHAPTER-3 Interface between Traditional Knowledge and Intellectual Property Rights

With the use of case studies, this chapter examines how TK and the current IPR Regime interact. The notion of property, including "intellectual property and IPRs as recognised by the TRIPs Agreement," is introduced in this chapter. While analysing the issue of traditional knowledge's protection under the current IPR framework, it provides more explanation of "traditional knowledge vis-à-vis

intellectual property rights." Traditional knowledge has a number of characteristics that make it ineligible for protection under the current IP system. Issues with "possession and ownership," difficulties locating owners, novelty or originality, and disclosure in the public domain have placed traditional knowledge outside the purview of the IP law.It is frequently argued that from an Indian perspective, solutions for the protection of TK through IPRs may be found by implementing a mix of IPRs as a temporary measure, until a sui-generis regime is developed specifically for this purpose, conferring exclusive property rights on holders of traditional knowledge with a view to preventing others from misappropriating the same. It also addresses the issue of TK theft while emphasising examples of biopiracy by mentioning the debates around the patents for turmeric, neem, basmati, etc.

CHAPTER-4 , International and National Initiatives-Sui Generis Systems of Protection

The international system for the protection of TK is introduced in this chapter. Although there isn't a special convention or treaty addressing the issue, there are clauses in several agreements, such as CBD, TRIPs, and ITPGRFA, that emphasise the need of protecting traditional knowledge. Discusses WIPO's efforts to create a sui-generis system for the preservation of traditional knowledge in more detail. The chapter focuses on the talks and deliberations that occurred during the Inter-Governmental Committee on Traditional Knowledge sessions that resulted in the creation of the draught law titled "The Protection of Traditional Knowledge:

Draught Article Facilitators' Rev.The chapter also mentions different sui-generis approaches of traditional knowledge protection under "National Initiatives." Study of the African, Brazilian, Peruvian, Panamanian, and Costa Rican models is included in this. The chapter concludes by highlighting India's efforts to safeguard TK, including the Indian Biological Diversity Act of 2002, the Protection of Plant Varieties and Farmers Rights Act of 2001, the Patent (Amendment) Act of 2005, the Forest Rights Act of 2006, and other non-legislative initiatives like the Traditional Knowledge Digital Library.

CHAPTER-5, A Sui-Generis Model for Protection of Traditional Knowledge in India

The chapter examines steps taken by India to create a suigeneris regime while making reference to a few draught bills that were never passed into law. The Protection of Traditional Knowledge Bill, 2020, is a draught model law that the researcher has created to safeguard traditional knowledge (TK) related to genetic resources in India.

CHAPTER-6 Conclusion.

In this chapter, the researcher has made an effort to emphasise important problems about the conservation of traditional knowledge while referencing the contradiction between "the CBD and TRIPs". The chapter goes on to analyse the viability of various TK protection strategies while highlighting the necessity of sui generis laws to adequately protect TK. The researcher has attempted to clarify a few pertinent and significant ideas in this last chapter of the thesis in an effort to provide suitable protection for traditional knowledge in India based on the observations and submissions that emerged from the current work.

CONCLUSION AND SUGGESTIONS

The traditional knowledge (TK) that local or traditional societies possess is seen as a form of intellectual property that has been maintained, nourished, retained, and developed by these communities through many generations. Since it is used in the community, the outside world has not acknowledged the significance or applicability of this information. The great significance of TK connected to genetic resources/wealth has, however, been realised in the wake of TRIPs and the expanding commercialisation, and it is today one of the most contentious problems facing the international community. We have seen, particularly in the last two decades, how large multinational firms have used traditional knowledge to their greatest advantage by producing a variety of plant-based medications and other health and aesthetic goods. It is frequently stated that the threat of bio-piracy has arisen as a result of some way in which the present intellectual property system has enabled such exploitation. As a result, representatives of poor countries and groups of people who have traditional knowledge have expressed grave worries about the worldwide theft of TK. In order to conserve TK, several megabiodiversity nations have implemented specific policies.

Certain ethical and legal principles apply to the safeguarding of TK. Traditional knowledge cannot exist in isolation since it is holistic in nature and connected to its holders. There are sure to be certain shared interests and feelings associated with TK because it is the culmination of the intellectual work of the traditional society. These societies' traditional knowledge is a valuable resource since its people produced it, used it, shared it, and then passed it on to their offspring. While it is true that TK is an old-school method, this does not imply it is without modern elements. Due to the enormous economic, cultural, and spiritual importance of TK, a comprehensive policy is needed to safeguard it from being illegally misappropriated and to maintain the rights and legitimate interests of these traditional communities.

In order to prevent appropriation, there must be a legal framework for traditional knowledge that is accepted globally. The definition of concepts like traditional knowledge, holders of knowledge, use, and misappropriation will be possible under such a system. After achieving an agreement, this would be useful in creating a solid knowledge of these concepts at an international level. However,

because the form and features of such knowledge vary from place to place and from State to State, it is challenging to develop an international legal framework to safeguard TK.

Additionally, the disparity in preferences between developed and developing countries makes it difficult to construct an international legal framework for the protection of traditional knowledge. The finest illustration of this discrepancy is the conflict between TRIPS and CBD aims. In order to make it imperative for every member country to observe the national legal framework pertaining to the protection of other nations' traditional knowledge, an international negotiation is necessary. Preferably, this negotiation will be binding. The WIPO Intergovernmental Committee has undertaken some noteworthy and laudable efforts.

An alternate solution for such protection is a sui-generis mechanism at the national level. International discussions must take into account this legal framework in order to ensure respect for each other's legal systems. Therefore, it is urgently necessary to develop a distinct and focused legal framework for the protection of TK and to safeguard the rights of knowledge holders.

The idea is supported by the aforementioned data, hence it is necessary to develop a sui-generis system to conserve traditional knowledge in India. The sui generis models used by nations like Brazil, Peru, Costa Rica, and Africa as well as the draught text created by the WIPO-IGC for establishing a system for conserving traditional knowledge in India may be of use to a mega biodiverse nation like India. The researcher would like to recommend the following actions for the strong and effective protection of traditional knowledge (TK) related to genetic resources in India:-

1. There must be a strong and effective sui-generis mechanism at national-level in order to deal with protection of TK in India.
2. Such law must contain the precise definitions of concepts like ―traditional knowledge, ―misappropriation‖, ―unauthorized use, ―prior informed consent etc

3. It must lay down the conditions for protection of traditional knowledge referring to the eligibility criteria as to what constitutes protectable subject matter under the instrument.
4. The law must identify and recognize the knowledge holders as beneficiaries‘.
5. There must be an Authority recognized as the statutory body for effective administration of rights under the instrument.
6. Such a sui-generis model should also be in harmony with other existing laws already in force.

In light of the aforementioned recommendations, it is important to note that the sui-generis model put forth by the researcher in Chapter 6 titled "The Protection of Traditional Knowledge Bill, 2020" may prove to be a useful tool for providing adequate protection for TK in India while taking into account the legitimate interests and expectations of the knowledge holders.

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